

HUTCHIN-  
SON, C.J.

&  
MIDDLE-  
TON, J.  
1900

April 2

[HUTCHINSON, C J AND MIDDLETON, J.]

IOANNES KARAGEORGIADES, AS PRESIDENT OF  
THE MUNICIPAL COMMISSION OF LIMASSOL, *Plaintiff,*  
v  
CHRISTODULO HAJIPAVLOU & SONS, *Defendants.*

STATUTORY DUTY, BREACH OF—REMEDY—ACTION FOR DAMAGES FOR BREACH—  
PENALTY FOR BREACH—MUNICIPALITY—THE WEIGHING AND MEASURING LAW  
No IV of 1884—THE WEIGHING AND MEASURING LAW No. XIV. of 1898

*It is not universally true that when a person is injured by another person's breach of a statutory duty, or does not receive some benefit which he would have received if the duty had been performed, he has a right to recover damages from the person who has failed to perform the duty, whether the breach does or does not give such right of action must depend upon the object and language of the particular Law.*

*By the Weighing and Measuring Law of 1898, all goods sold within the limits of a Municipality of a nature and quantity mentioned in the Schedules thereto must be weighed by the Municipal Weigher, and fees are to be paid therefore to the Municipal Weigher by the vendor, and it is the duty of the vendor and purchaser to inform the Municipal Weigher that the goods are ready and require to be weighed and measured on pain of a fine of £3*

*The Defendants in some twenty instances failed to observe this duty, whereby the Municipal Commission of Limassol alleged that they were deprived of fees to the amount of £5 9s 2 c p*

*The Plaintiff brought an action claiming this amount as damages for the non fulfilment on the part of the Defendants of their statutory duty*

*HELD that the object of the Law, as gathered from an examination of the Law itself and its history, was to protect the public against the use of false weights and measures, and although some of the Municipalities, perhaps, do make a profit by appropriating the fees payable to their Weigher, yet it was no part of the object of the Law to enable them to do so, and, therefore, the Plaintiff was not entitled to sue for damages on the ground that the Municipal Commission had been deprived of a profit which it would have made if the Defendants had duly performed the requirements of the Law.*

APPEAL from the District Court of Limassol

*Lascelles, Q.A* , for the Appellant

*Economides* for the Respondents

The facts and arguments sufficiently appear from the judgment.

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*Judgment.* This is an appeal by the Plaintiff from the judgment of the District Court of Limassol dated the 12th of February, 1900, dismissing the action

The Plaintiff's claim was for £5 9s. 2 c.p. as the weighing fees of which the Defendants deprived the Plaintiff by not calling in the Municipal Weigher. The defence was that, even if the Defendants had broken the Law (which they denied), they were only liable to a fine and were not liable to pay damages to the Municipality.

The Weighing and Measuring Law XIV. of 1898, enacts (s. 2), that every Municipality shall keep weights and scales for weighing goods; (s. 3), that whenever a sale of goods of the kind and quantity specified in the Schedule takes place within the limits of the Municipality, or whenever such goods, the subject matter of any sale, are delivered or to be delivered within those limits, they shall be weighed by the Municipal Weigher, to whom the vendor shall pay certain fees for the weighing; and (s. 4), that whenever any goods are required to be weighed under this Law, "it shall be the duty of the vendor or purchaser" to inform the Municipality that they are ready and require to be weighed, and to afford the Municipal Weigher every facility to enable the weighing to take place; and that "any person contravening any of the above provisions shall be guilty of an offence, and for every such offence shall be liable on conviction to a fine not exceeding £3."

The Plaintiff alleged that the Defendants on twenty occasions in August and September, 1899, did not comply with this Law, and that the Municipality of Limassol thus lost the fees which should have been paid by the Defendants; and it is for those fees that the action is brought.

The first issue settled was, "is the Plaintiff able to bring this civil action, or is the remedy a criminal one under Law XII. of 1898?" The District Court decided this issue in favour of the Defendants and dismissed the action without hearing any evidence. The reason they gave for doing so was that "a civil action for damages, if allowable, must be brought after criminal prosecution for the fine," and that in this case there had been no prosecution. The reason is not a valid one; for s. 54 of the Cyprus Courts of Justice Order provides that "no civil remedy which any person may have against any other person for any act or omission shall be suspended or in any way affected by the fact that such act or omission amounts to a criminal offence." The judgment may, however, be supported on other grounds.

On the appeal it was argued for the Plaintiff that, assuming that the Defendants did not comply with the Law, the Municipality suffered damage through the Defendants' non-compliance, and it is entitled to sue the Defendants for that damage; that the Law creates a duty which the Defendants did not perform, and which was intended for the benefit

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of the Municipality, and that the Municipality can therefore recover the damage which it has suffered through that breach of duty. The Law repealed the Weighing and Measuring Law of 1884, which did not compel buyers and sellers, but only gives them the right, to have their goods weighed by the Municipal Weigher; and the Plaintiff's Advocate contends that this Law of 1898, was intended to revive in substance the old *rusumat* or weighing tax which was abolished by the Law of 1894, so as to provide a revenue for the Municipalities; he pointed out that the Law only applies in places where there is a Municipality; that the Municipalities do, in fact, earn a considerable revenue from these weighing fees, which revenue will be practically lost if the decision of the District Court is upheld; that s. 10 empowers the High Commissioner "whenever it appears that the revenue of any Municipality is insufficient for the purposes to which it is applicable," to increase the fees prescribed in the Law to be taken on the weighing of caroubes; and he contended that all this shews that, although one object of the Legislature may have been to protect sellers and buyers, the provision of a revenue for the Municipalities was also an object. And if that was so, the Legislature must have intended that Municipalities should be able to sue for the fees which they lose when buyers and sellers fail to perform their duty under the Law, inasmuch as the fine imposed by Law is no benefit to the Municipality, and there is no remedy provided in the Law for the benefit of the Municipality.

In support of this view it was urged that the fine under the Law is inadequate; that on a large transaction the buyer and the seller might, by not calling in the Municipal Weigher, save a comparatively large fee and only be liable to a fine of £3 each. With regard to this it is enough to say that the fine is not so plainly inadequate as to furnish any argument that the Legislature must have contemplated its being supplemented by an action for damages; that in the present case the fine to which the Defendants have made themselves liable, according to the Plaintiff's showing, amounts to £60, while the other party to the transactions is liable for another £60, making a total of £120 in fines; whereas the weighing fees only amount to £5 9s. 2 c.p.

It is not universally true that when a person is injured by another person's breach of a statutory duty, or does not receive some benefit which he would have received if the duty had been performed, he has a right to recover damages from the person who has failed to perform the duty. It is easy to think of cases in which it is clear that there is no such right. We can find nothing in the Ottoman Law to serve as a guide in this matter; and we think, therefore, that we may rightly adopt the principle acted upon in such cases by the English Courts,

which is not a principle contained in any Law, but is merely a rule of common sense; and this principle is, that whether the right exists or not must be decided in each case by looking at the whole of the Statute and seeing its object and examining its language.

The Law of 1898 now in question was preceded by one of 1884, which dealt with the same matter; but whereas that of 1884 left it optional with buyers and sellers of goods to have them weighed or measured by the Municipal Weigher, that of 1898 makes it compulsory for them in certain cases to do so, on pain of a fine. Neither of the Laws contains any preamble or recital of its object. Each of them begins by requiring every Municipality to keep proper weights and measures, and goes on to state what kind of goods may, or shall, be weighed by the Municipal Weigher. The fees under the Law of 1898, are to be paid to the Weigher, not to the Municipality; but s. 10 shews that the Legislature in 1898, thought that the Municipality would really get the benefit of the fees.

It is said, and we will assume it to be the fact, that the Municipalities do earn considerable sums from the fees payable to the Municipal Weigher. But we cannot see from the Law or from any circumstances known to us that the object, or the principal object, or one of the objects, of the Law was to provide a source of revenue for the Municipalities, to tax buyers and sellers of goods for the benefit of the Municipalities. S.10 seems at first sight to shew that that was one object of the Law; but the introduction of this section is to some extent explained by the fact that the fee prescribed by the Schedule for the weighing of caroubs is only about half of the fee prescribed by the Law of 1884.

It seems to us, forming our opinion, as we are bound to do, from an examination of the Law itself and its history, that the principal object of this Law, as of the Law of 1884, is shewn by the clauses which come first, which impose on the Municipalities the duty of keeping proper weights and measures: and we conclude from this that the object was to protect the public, and particularly the farmer, against false weights and measures. And although some of the legislators who voted for the Law may have been partly influenced to do so by the belief that it would be a good thing for the Municipalities; and although some of the Municipalities perhaps do make a profit by appropriating the fees payable to their weigher; yet we cannot find that it was any part of the object of the Law to enable them to make this profit. Therefore the Municipalities are not entitled to sue for damages on the ground that they have been deprived of the profit which they would have made if the Defendants had duly performed the requirements of the Law.

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There is another reason why, in our opinion, this action could not succeed. The fees payable under this Law are payable to the Municipal Weigher, not to the Municipality. The Law says so expressly. Therefore the Municipality could not sue for the fees even if the weighing had been done in the way prescribed in the Law. We may conjecture that the Legislature made a mistake and meant that the fees should be paid to the Municipality: but the Law does not say so: and we are not the Legislature.

The judgment of the District Court must, therefore, be affirmed, and the Appellant must pay the costs of the appeal.

*Appeal dismissed.*